



# 46<sup>TH</sup> ANNUAL INDIANA CONSORTIUM

*of*

## STATE AND LOCAL HUMAN RIGHTS AGENCIES CONFERENCE

PRESENTED *by:*



# INDIANA PUBLIC DEFENDER COUNCIL'S: JUVENILE DEFENSE PROJECT



# THE JUVENILE COURTS/LAW— WHERE DID IT COME FROM?

- 19<sup>th</sup> Century: Children alleged to have committed crimes were prosecuted in courts of general criminal jurisdiction.
  - No legal provision for separate confinement from adults pending trial
  - Cases heard in same manner as adult criminal cases
  - No special provision for unique disposition
  - But all of the constitutional guarantees for adults applied to kids

# REFORM RESULTS IN ACTS (We were 3<sup>rd</sup>)

- Illinois Juvenile Court Act, 1899
- Colorado Juvenile Court Act, March 7, 1903
- Indiana Juvenile Court Act, March 10, 1903
  - Purpose: “That the care, custody and discipline of the child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done, the child is to be placed in an improved family home and become a member of the family, by legal adoption or otherwise.”

# LOOKS MUCH LIKE AN ADULT CRIMINAL CASE



**“ We are a Court for children, and children need no constitutional guarantees to protect them in the Courts for children. The Courts are given a great deal of power under the Juvenile Court law, which should always be used for the children and never against them.”**

Comment from an Indiana juvenile court judge. Addison M. Beavers, *The Philosophy of Children's Court Proceedings*, in *FIRST ANNUAL INSTITUTE OF THE JUVENILE AND CRIMINAL COURT JUDGES OF INDIANA* 1 (1960).

# *IN RE GAULT*, 387 U.S. 1 (May 15, 1967)

- 15-year-old Gault was prosecuted for making a “lewd” phone call.
- NO: formal written complaint, legal representation, or witnesses, in an unrecorded proceeding with no opportunity to appeal.
- He was then sent to the “State Industrial School” for the “period of his minority (until 21) unless sooner discharged.”

# SOME GAULT QUOTES:

- “Neither the **14<sup>th</sup> Amendment**, nor the **Bill of Rights** are for adults alone.”
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- “Juvenile Court history has again demonstrated that **unbridled discretion**, however benevolently motivated, is frequently a poor substitute for principle and procedure.”
- “Under our Constitution, the condition of being a boy does not justify a **kangaroo court**.”

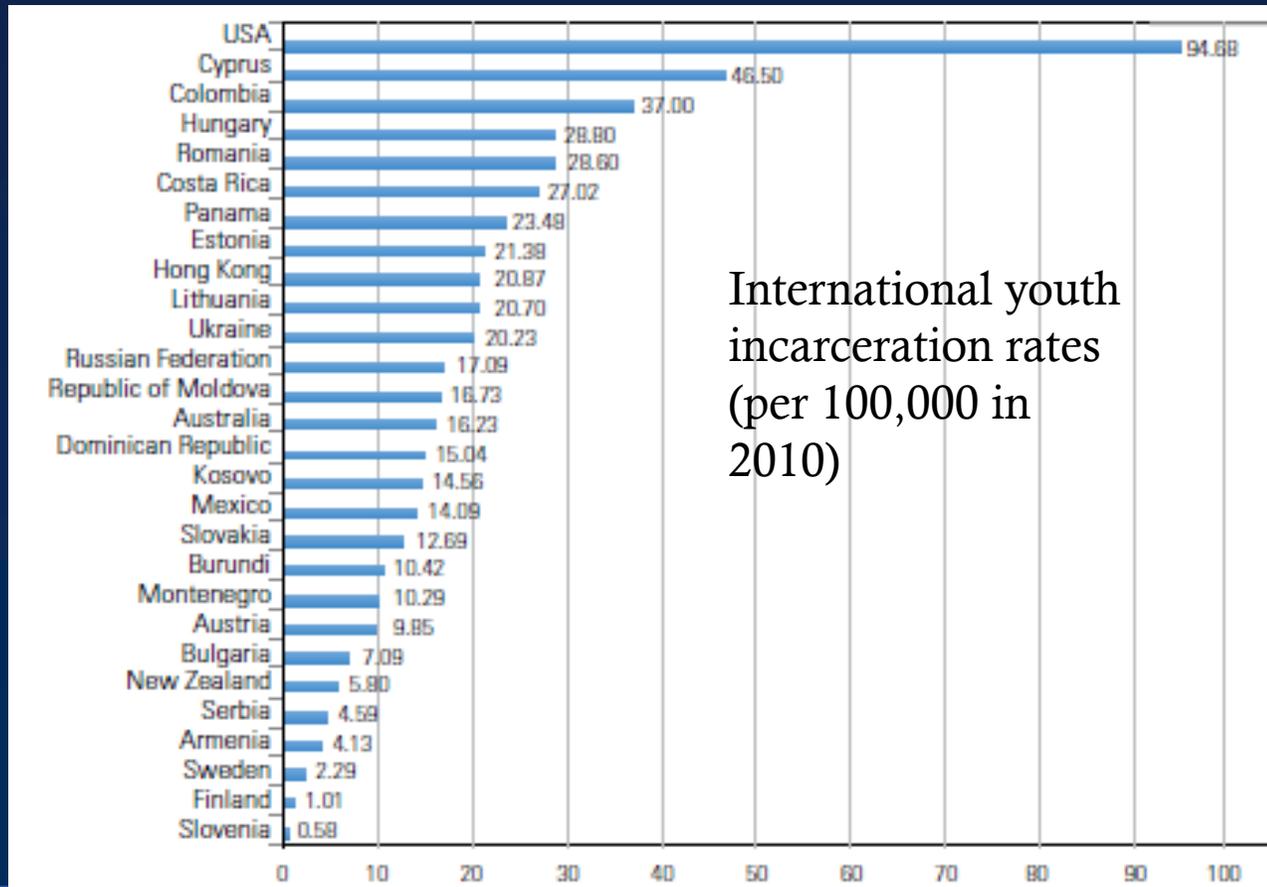
# OUR FIRST PRIORITY: MAKE SURE KIDS HAVE COUNSEL

- “The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman . . . lacks both the skill and knowledge to adequately prepare his defense, even though he may have a perfect one.” *Powell v. Ala.*, 287 U.S. 45 (1932).

# JUNETEENTH IS TOMORROW!

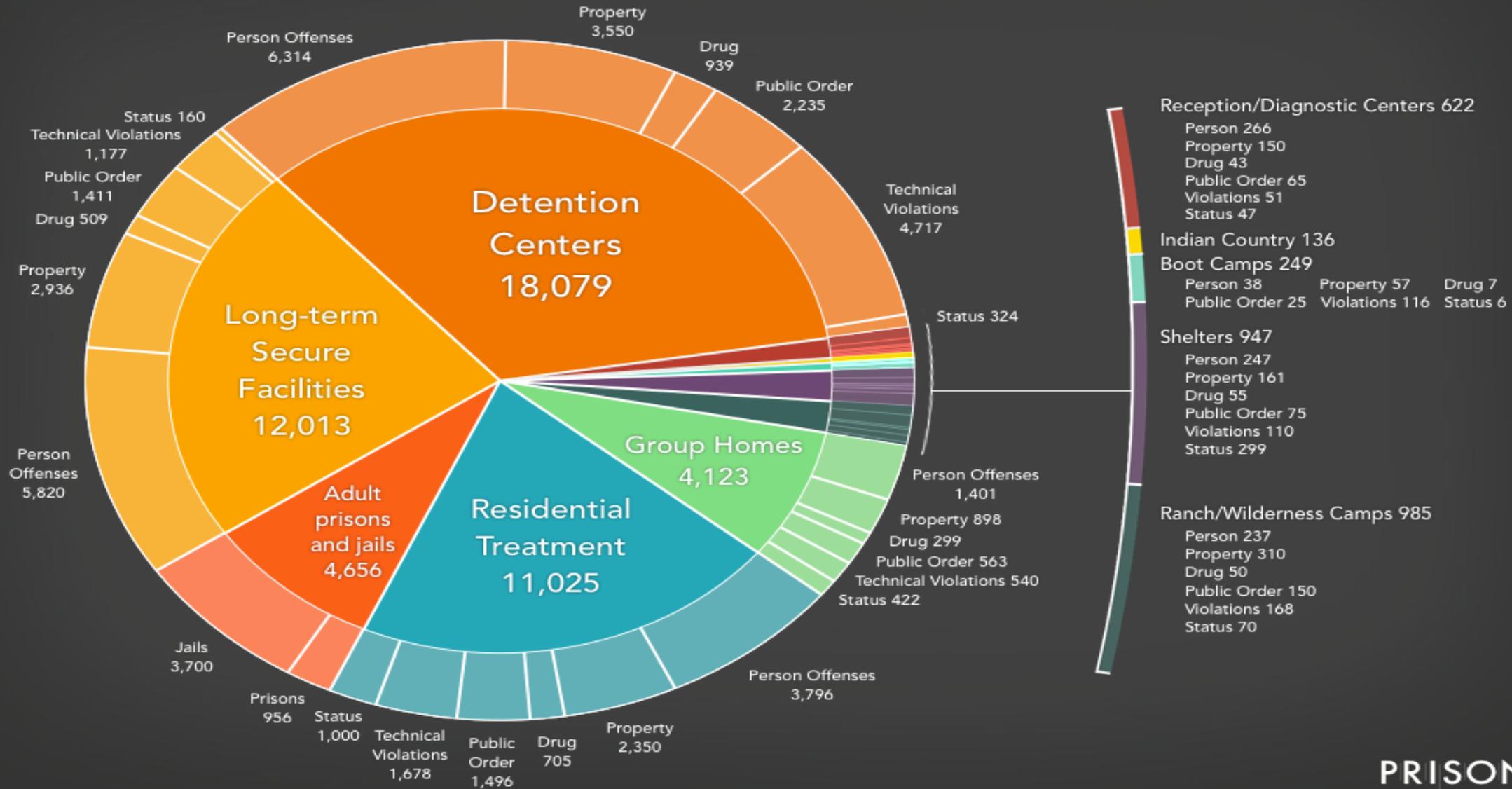
- Right to counsel for juveniles comes from the 14<sup>th</sup> Amendment Due Process Clause.
  - Part of the group of amendments passed to ensure a transition from slavery to freedom and equality.
- “The American penal system as emerged as a system of social control unparalleled in human history.” Michelle Alexander, *“The New Jim Crow.”* (2011)

# US INCARCERATES YOUTH AT THE HIGHEST RATE IN THE WORLD



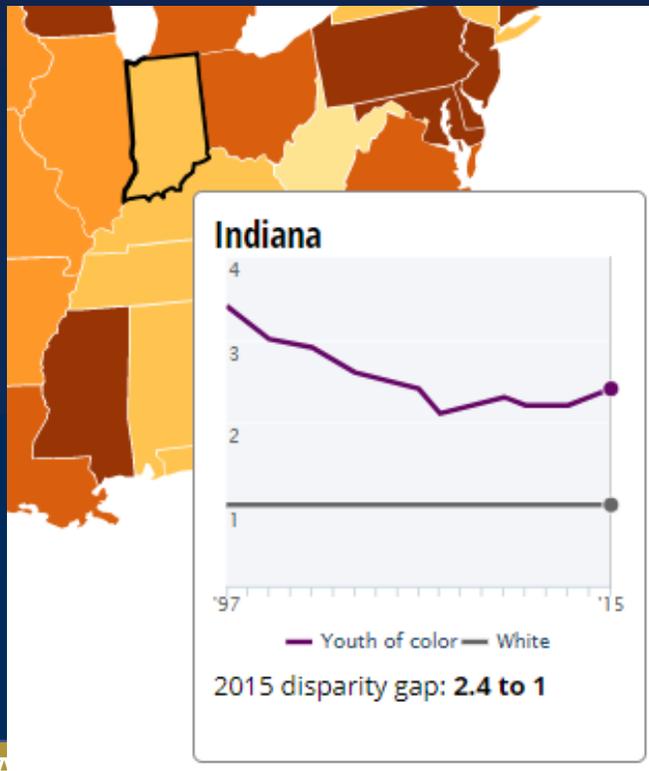
# How many youths are locked up in the United States?

Every day, nearly 53,000 youths are held in facilities away from home as a result of juvenile or criminal justice involvement.

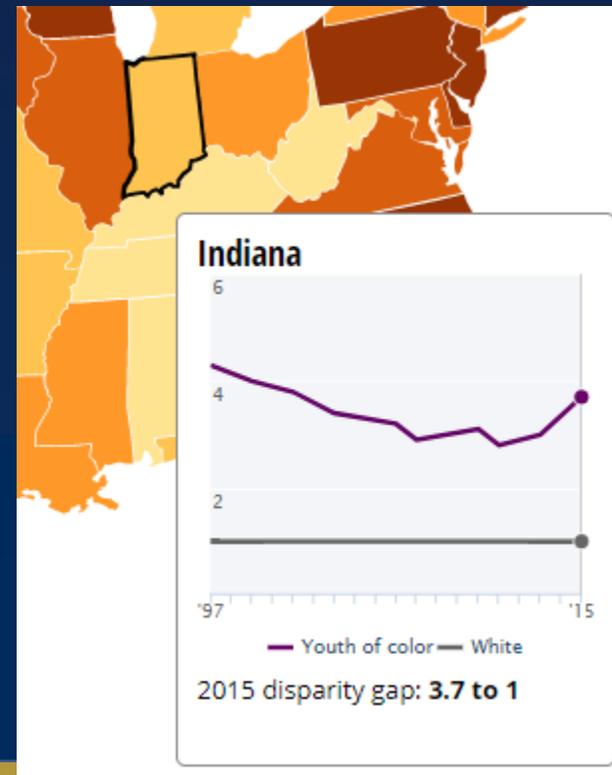


# RACIAL DISPARITY IN COMMITMENTS

## All Youth of Color

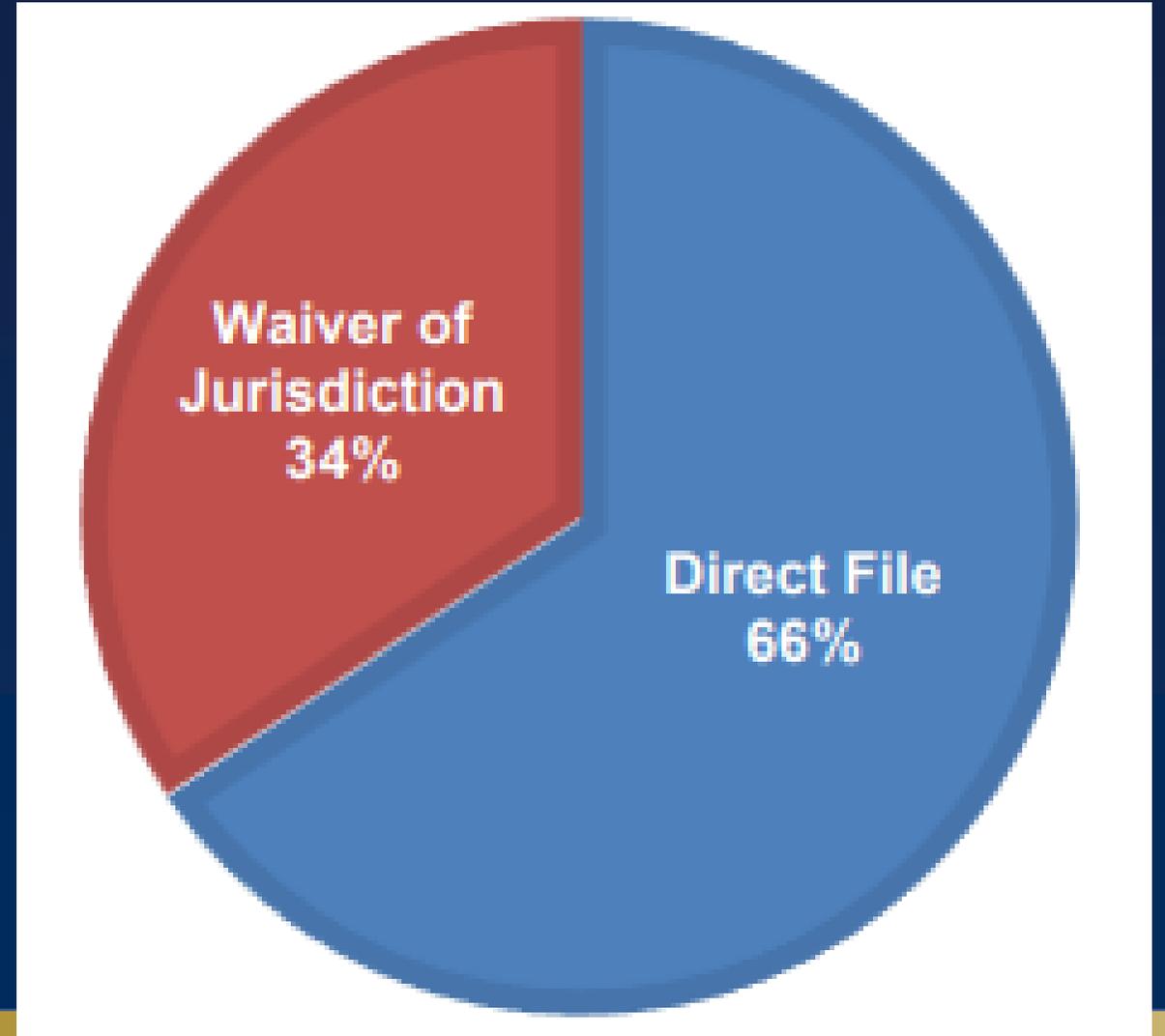


## African American Youth



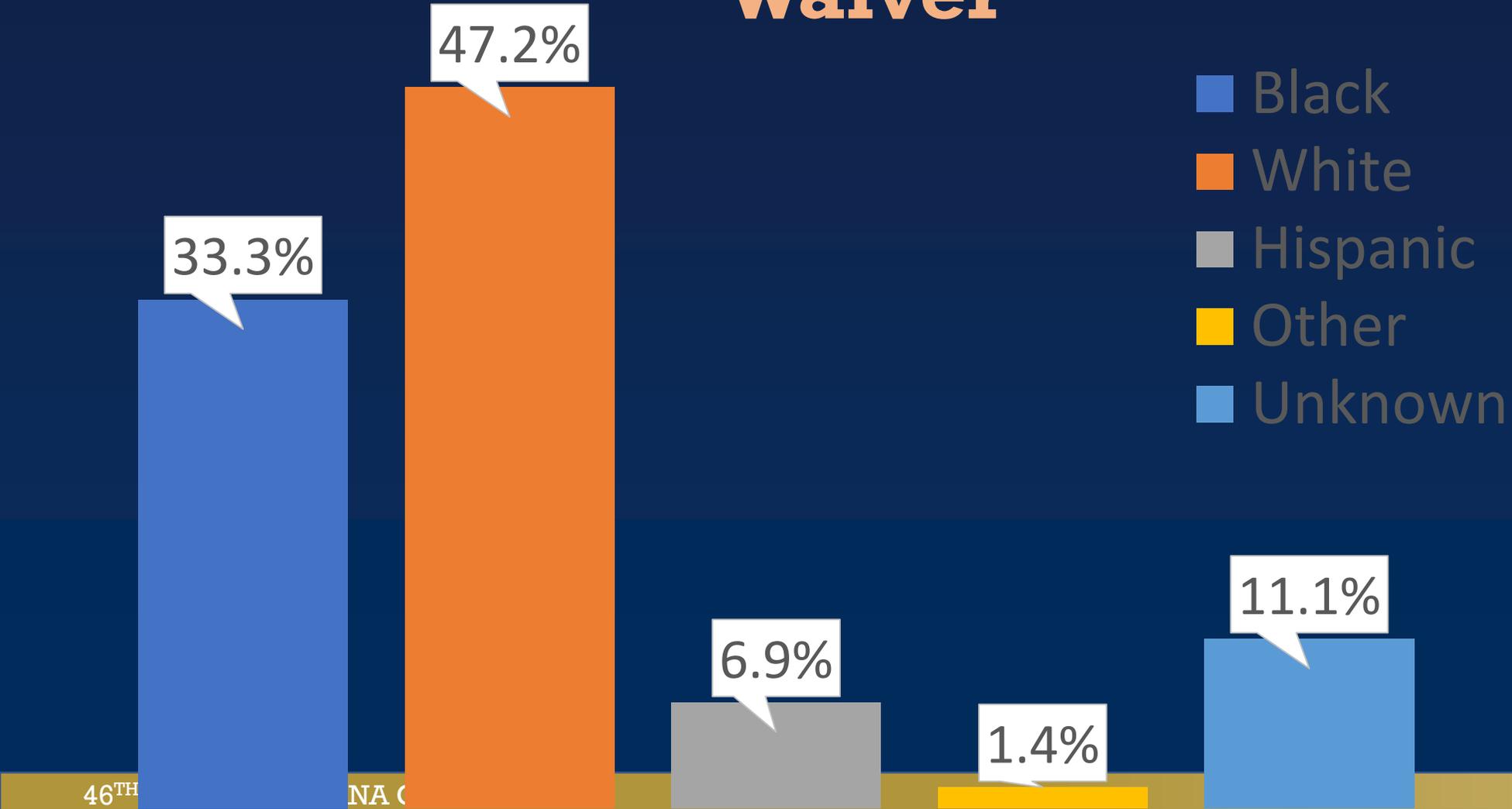
# DATA ON CHILDREN IN CRIMINAL COURT

- 238 children charged as adults
  - 156 direct file
  - 82 waivers



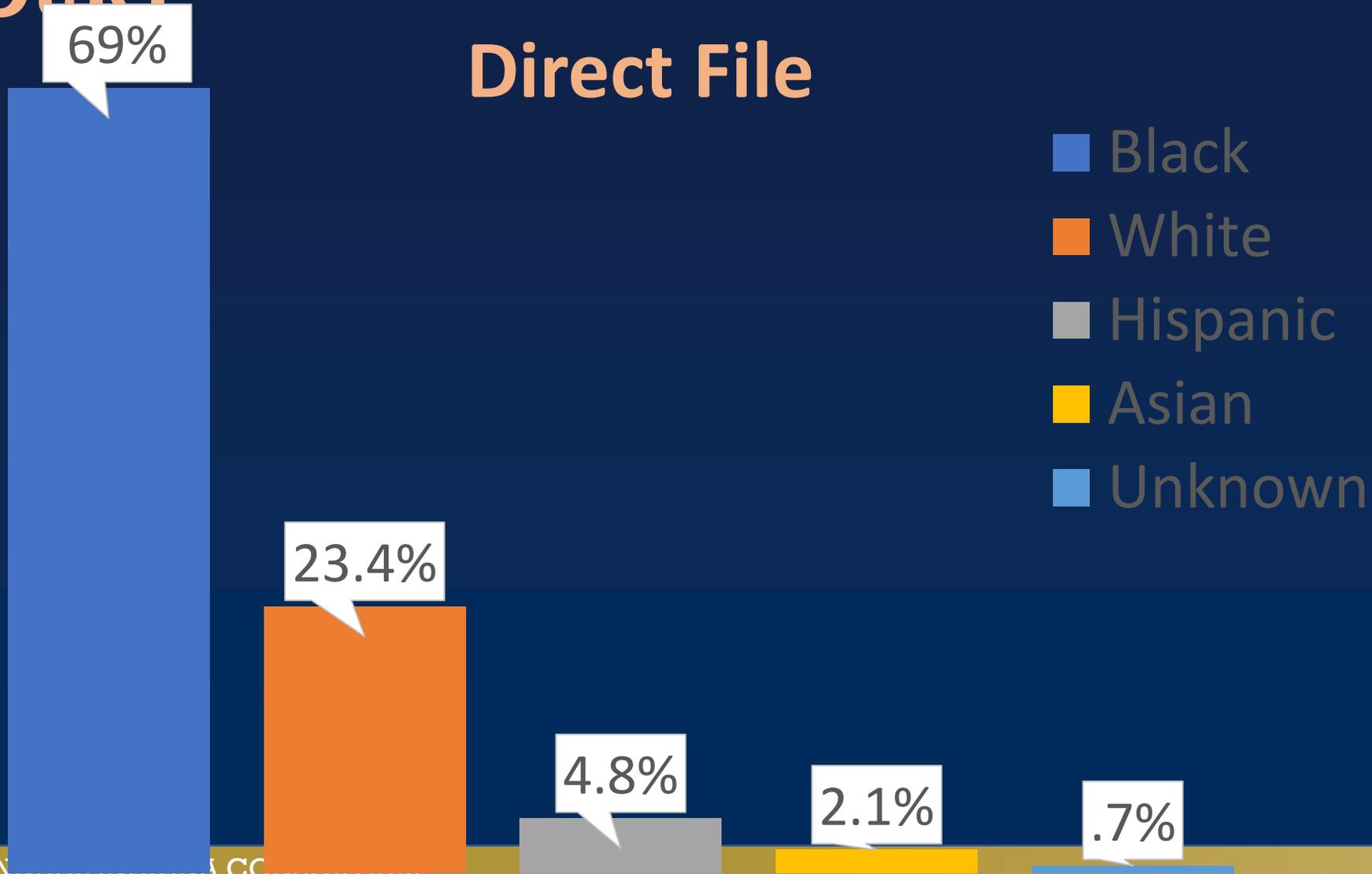
# DATA ON CHILDREN IN CRIMINAL COURT

## Waiver



# DATA ON CHILDREN IN CRIMINAL COURT

## Direct File



2006

- Indiana Assessment
- Access to and Quality of Representation in Delinquency Proceedings

2015

- Juvenile Justice OJJDP Grant
- Develop State Plan to Improve Indigent Juvenile Defense System

2016

- Follow up Juvenile Justice OJJDP Grant
- Implementation of State Plan

# GOAL 1



- Ensure that all youth have access to counsel at all critical stages, including early appointment at detention hearings or initial hearings.

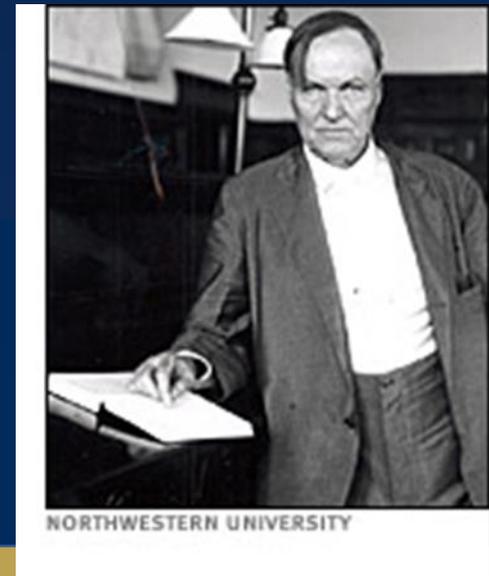
## GOAL 2



- Create a strong system of post-dispositional representation for youth through increased state resources, including appellate representation and civil legal services upon re-entry.

# GOAL 3

- Create a system of comprehensive and thorough legal advocacy which recognizes juvenile defense as a specialization.



# GOAL 4

- Enhance the current juvenile data collection to promote accuracy and to collect key defense data indicators statewide.

## Anecdotal evidence reliable? One man says “yes”.

**A STUDY CONDUCTED YESTERDAY** by a man on himself concluded that self-reported anecdotal evidence is, in fact, both reliable and relevant.

The landmark study, conducted by Mark Mattingly of Virginia Beach in his apartment, concluded with 100% accuracy that data collected from personal experience can disprove other data conducted by reputable scientific institutions, thereby proving once and for all that “statistics can’t be trusted”.

In a press release Mr. Mattingly took aim at his detractors saying that “...this study shows what I’ve been telling people on the internet for years: all your fancy evidence and statistics don’t mean nothing in the real world.”.

A frequenter of internet forums, comment sections, and social media, Mr. Mattingly recounts that he was inspired to undertake the study when someone reportedly kept insisting that he provide evidence for his claims. “I think everyone’s entitled to an opinion, and that my opinion is worth just as much as anyone else’s” Mr. Mattingly said.

Academic types have criticised the study, and papers who are publishing it, saying that it lacks everything and makes no sense. When shown the study, Emeritus Professor James Albrecht of Carnegie Mellon University looked all confused and hopeless before making pining, guttural sounds.



*Mr. Mattingly in his apartment looking all smug.*

Mr. Mattingly has responded saying that this is just the first of many studies he intends to conduct, and that a meta-analysis of people who have opinions and anecdotal experiences independent of controls, methodological rigor, blinding and peer review are soon to be published, adding further weight to his initial findings.

# UPDATED SLIDE ON TRAINING ATTORNEYS

# UPDATED SLIDE ON KIDS REFERRED FOR DIRECT APPEALS AND COLLATERAL ATTACKS



A lawyer's either a social engineer or ... a parasite on society ... A social engineer [is] a highly skilled, perceptive, sensitive lawyer who [understands] the Constitution of the United States and [knows] how to explore its uses in the solving of problems of local communities and in bettering conditions of the underprivileged citizens.

— *Charles Hamilton Houston* —

**AZ QUOTES**

# BECOMING SOCIAL ENGINEERS

- Identify one area most in need of juvenile justice reform.
- Identify at least one step you, in your role, could take in that reform.

# UPCOMING JUVENILE JUSTICE ISSUES



Waiver of 12 and 13 year olds charged with attempted murder



Minimum age for detention

Competence to stand trial



Probation reform











